

REMARKS

Applicant respectfully requests entry of this Amendment prior to examination of the present application. By this Amendment, Applicant amends claim 101 to add at least one compound chosen from sucrose acetate isobutyrate. Support for the amendment can also be found throughout the specification and claims as originally filed, for example in Example 2 of the specification and paragraphs [078], [082], and [084]. Accordingly, claims 1-114 are pending in this application. No new matter has been introduced by this Amendment.

A. Restriction Requirement

In the Office Action dated July 2, 2007, the Examiner required restriction under 35 U.S.C. § 121 between five groups of claims. Although Applicants continue to disagree with the restriction requirement, to be responsive Applicants elected to prosecute Group I, i.e., claims 1-107 and 114, drawn to a composition comprising a) at least one liquid fatty phase, b) a dispersion of at least one polymer particle dispersed in the liquid fatty phase, and c) at least one compound chosen from aliphatic/aromatic polycarboxylic acids and alcohols, classified in class 528, subclass 176. See Response to Restriction Requirement filed January 2, 2008.

B. Election of Species Requirements

The Office communication dated March 13, 2008 indicates "Applicant's response to the Restriction/Election requirement, received 1/2/08, is deemed to be incomplete by failing to specifically indicated the claims which read on the elected species and failing to elect an anhydrous composition wherein all the pharmaceutically active components are specifically indicated for examination purposes." See Office communication.

A summary of the Examiner's species requirement is provided below:

- 1) either a) an anhydrous composition (see claim 75), or b) a hydrous composition, and also either c) without a second composition, or d) with a second composition (see claim 114),
- 2) a single specific composition species wherein the form (e.g., lipstick) as well as each active ingredient is specified (e.g., Example 2 or 3 of the specification); however the percentages of each ingredient need not be specified,
- 3) a polycarboxylic acid compound species (see, e.g., claims 8, 15, 17 and dependent claims),
- 4) an alcohol compound species (see, e.g., claim 5 and its dependent claims),
- 5) a polymer particle, e.g. polyurethanes,
- 6) a stabilizer, e.g. block polymer, graft polymers, random polymers,
- 7) a gelling agent, e.g. styrene-ethylene/propylene-styrene copolymer,
- 8) a wax, e.g. ethylene polymer, and
- 9) a composition product, e.g. lipstick

See Office Action dated July 2, 2007 at 5-6.

Furthermore, if a composition comprising a compound of the recited alcohol of formula R1OH of claim 5, or the recited dicarboxylic acid of claim 8, or the recited tricarboxylic acid formula of claim 17, the Examiner requires:

10) election of a specifically defined compound wherein each variable/optional group is provided with respect to R1, n, and R, respectively.

Finally, the paragraph entitled "Additional Election of Species Regarding Group III" at page 6 of the Office Action was acknowledged by the Examiner to be in error.

The election of species requirement is respectfully traversed. However, in order to be fully responsive, Applicants elect for examination the following species:

- 1) an anhydrous composition (see claim 75);
- 2) the composition in the form of a lipstick according to Example 2;
- 3) acetic acid as a carboxylic acid;

- 4) sucrose as an alcohol;
- 5) the acrylic copolmer from Example 1 as the polymer particle, poly(methyl acrylate/acrylic acid);
- 6) block polymers chosen as the stabilizer;
- 7) polycaprolactones as a gelling agent;
- 8) polyethylene wax as a wax, and
- 9) a composition product of a lipstick.

Applicants note that this election of species is consistent with Example 2 of the specification. In addition, the following claims read on the individual and elected species as set forth above: claims 78-102, 105, and 114.

Further, Applicants respectfully remind the Examiner, if the elected species is found allowable, of her duty to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a "reasonable" number of the non-elected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

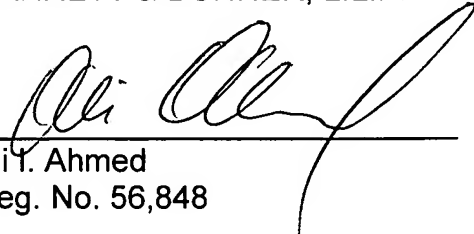
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: **April 14, 2008**

By: _____


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